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Supreme Court of the United States

OCTOBER TERM 1943

No. 754

RUFUS MESHBERGER and LELIA B. MESHBERGER,
Petitioners,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF THE PETITIONERS.

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REPLY BRIEF

On behalf of the Petitioners.

This reply brief will follow the order of the answer brief of the respondents which is designated a "Reply" Brief.

The paging of that brief will be followed as headings for reply to the matter contained therein.

Page 2 of Respondent's So-called "Reply" Brief

Section Numbered 2.

Failure by the bankruptcy court to distribute rental payments to the secured creditor, as required by Section 75(s)(2), is, of course, not to be imputed to the farmer debtors. That such rental was paid by the respondents has never been, and is not now, denied by the respondent.

Page 2 of Respondent's So-called "Reply" Brief

Section Numbered 2.

Both the petitioners' appeal and that of the respondent were taken on the same day, namely August 7, 1941. For petitioners' appeal see top of R. 39. For respondent's appeal see top of R. 40.

Page 3 of the Respondent's So-called "Reply Brief"

Section Numbered 1.

11 U. S. C. Section 203 (s)(3), that is Section 75 (s)(3), does not name or fix any period for payment into court of the redemption money when the court fixes a new valuation. This court said in *Wright* v. *Union Central,* 311 U. S. 273, that the farmer-debtor was in such a case entitled to have "a reasonable time, fixed by the court". No time so fixed by a court is a "reasonable time" where the secured crdeitor, the present respondent, itself sought the order and then contested its validity by appeal until long after the time set by the court.

The appellate court itself disagreed with the respondent for it held that the period fixed ran not from May 27,

1941, as originally set by the bankruptcy court, but from July 10, 1941, when respondent's contest of that order within the district court was decided. See Note at Page 22 of the petitioners' brief.

Pages 3 and 4 of the Respondent's So-called "Reply" Brief

The same Section Numbered 1.

The appellate court in its order at R. 55 entered October 9, 1942, did not hold that the redemption period expired May 27, 1942. On the contrary in its opinion it specifically held that the redemption period ran from July 10, 1941, the date when the district judge denied the respondent's petition for review. R. 140, middle of page, paragraph beginning "In the first place". See note 2 page 22 of the petitioners' brief.

Page 4 of the Respondent's So-called "Reply" Brief.

The same Section Numbered 1 at the first full paragraph on page 4.

The respondent's first full paragraph at page 4 beginning with the words "In refusing to deposit $6,000", totally ignores the fact that respondent itself muddied the waters by (1) seeking the $6,000 order, (2) by its proceedings for review in the district court, and (3) by its appeal in the appellate court, until long after May 27, 1942. It is estopped after it continuously stirred up the waters for a year and a half, to complain that the petitioners should have seen clearly that, after all the respondent's kicking would be disregarded. See pages 28 and 29 of the petitioner's brief.

Pages 4 and 5 of the Respondent's So-called "Reply" Brief.

Section Numbered 2.

Bronson v. *LaCrosse*, 68 U. S. (1 wall.) 405.

In substance the *Bronson* case and this *Meshberger* case are remarkably similar on the point discussed.

Point discussed: Whether a litigant who seeks and obtains an order and then contests it may insist that it can be executed during its contest.

Parallels

Bronson case	*Meshberger* case
I.	
Litigant sought and obtained a decree of foreclosure.	Litigant sought and obtained an order fixing valuation and time for payment. R. 29. Prayer of respondent's petition at end of petition, bottom of R. 29.
II.	
Litigant sought reversal of order it obtained. "A final decree of foreclosure was entered . . . *in favor* of the complainants . . . and an appeal was taken by those complainants". (Italics are those of the official report. 68 U. S. (1 Wall.) 405, end of first paragraph on page 406).	Litigant sought reversal of order it obtained. R. 32. Denial of respondent's petition for review.

III.

Litigant maintained the order it had obtained and contested by appeal could be executed during its appeal. See preceding quotation under heading II.	Litigant maintained the order it obtained and contested could be executed during its appeal.

The respondent is quite right when it says in its so-called "Reply" brief in the last half of page 5:

> "Mr. Justice Nelson fully recognized the settled rule" when he said "at page 410 (68 U. S.):" of *Bronson* v. *LaCrosse,* 68 U. S. (1 Wall.) 405, 410: "' . . . This is not a case where security is to be given in order to supersede the execution.'"

That is, where a litigant seeks foreclosure, obtains a decree of foreclosure and then contests it by appeal. So also in this *Meshberger* case, where the respondent sought an order fixing valuation and time for payment and secured such an order, and then contested it by appeal.

> "That rule [said the court] applies in cases where the decree or judgment is against the party appealing, and who desires to suspend the issuing of execution by the adverse party until the appeal is heard and determined."

That is, the *Bronson* case was a different case because the foreclosure decree was **in favor of**, Bronson, not against him, and Bronson appealed. So the Meshberger order fixing valuation and time for payment is also a "different case" because it was **in favor of** the respondent, not against it, and respondent appealed.

Exactly contrary to the misinterpretation of the *Bronson* case at the foot of page 5 in the respondent's "Reply" brief, that decision squarely holds that the successful party **may not** claim that a judgment in its favor may be executed during its appeal from that judgment. In the words of this court, beginning at the bottom of page 409:

> "**They having appealed from the decision, it would be against all reason and principle to permit them to proceed with the execution of it pending the appeal.**"

That is they were estopped.

The decision of this court in the *Bronson* case that an appeal by a party from an order in its favor which it sought, estops it from claiming that it may insist that the order may be executed during its appeal, is not dicta. This court held squarely that on two equally valid grounds the district court could not proceed with execution of its judgment while the successful party which sought it was appealing from it.

Pages 6 to 9 of the Respondent's So-called "Reply" Brief

Section Numbered 3.

Reconstruction v. *Prudence*, 311 U. S. 579. Of course, we know that the facts in the *Prudence* cases (petitioners' brief pages 30 and 31) and in this *Meshberger* case are not alike. **Yet the same principle is equally applicable to both cases**. If it is a question of diligence which the respondent would claim to be in the one instance and not in the other, it was not shown in the Prudence cases, because for many years prudent practitioners had diligently provided against

the possibility of having their appeals dismissed by taking alternately two appeals, one in the district court and the one in the appellate court.

Respectfully submitted,

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Washington,
April 17, 1944.